

STATE OF MICHIGAN
COURT OF APPEALS

DONALD L. VANDERWEST,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

UNPUBLISHED

July 23, 1999

No. 205483

Ingham Circuit Court

LC No. 96-084302 NO

Before: Wilder, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for proceedings consistent with this opinion.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except with regard to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Moore v First Security Casualty Co*, 224 Mich App 370, 375; 568 NW2d 841 (1997).

I

Plaintiff first argues that defendant's motion for summary disposition did not comply with MCR 2.116(G)(4), which requires the moving party to specifically identify the issues regarding which it asserts there is no genuine issue of fact. We disagree.

As plaintiff notes, in presenting a motion for summary disposition pursuant to MCR 2.116(C)(10), the moving party must specifically identify the matters which have no disputed factual issues. See *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). However, "[w]hatever the procedural peculiarities of the . . . pleading and response[], it is clear that at the time of

the hearing . . . the parties knew” that the interpretation of the 1990 settlement agreement was in issue. *Quinto v Cross & Peters Co*, 451 Mich 358, 366; 547 NW2d 314 (1996). Accordingly, we find no error requiring reversal.

II

Plaintiff next argues that the trial court erred in granting defendant’s motion for summary disposition because the parties’ contract does not state that plaintiff waived his right to future employment with defendant. We agree.

Under ordinary contract principles, if the language of a contract is clear and unambiguous, its construction is a question of law for the court. *Michigan Nat’l Bank v Laskowski*, 228 Mich App 710, 714; 580 NW2d 8 (1998). Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491-492; 579 NW2d 411 (1998). A contract is ambiguous if its words may reasonably be understood in different ways. *Id.* at 491. If the meaning of an agreement is ambiguous or unclear, the intent of the parties must be determined by the trier of fact. *Id.* at 492.

The settlement agreement provides in pertinent part, “[T]he parties agree that Treasury shall pay \$360,000 to Donald L. Vanderwest *for resigning from the Treasury* and executing a waived rights leave of absence by September 30, 1990” (emphasis added). In addition, the agreement states, “IT IS FURTHER UNDERSTOOD AND ACKNOWLEDGED . . . that there are no other agreements, understandings, or representations made by Treasury and each of its agencies . . . except as expressly stated herein.”

Defendant contends that the contractual language means that plaintiff left his position with the Treasury and waived his right to future employment in any position with the Treasury. Plaintiff, however, argues that the agreement does not prohibit him from applying for open positions with defendant in the future.

In *Random House Webster’s College Dictionary* (1997), p 1106, “resign” is defined in part as “to give up an office or position (often fol. by *from*).” While this definition does not contain a temporal component, we believe that the settlement agreement can reasonably be understood as interpreted by both plaintiff and defendant. Because we find the agreement to be ambiguous, we conclude that the trial court improperly granted defendant’s motion for summary disposition. When reviewing a motion for summary disposition, a trial court must carefully avoid making findings of fact under the guise of determining that no issue of material fact exists. *Mahaffey v Attorney General*, 222 Mich App 325, 343; 564 NW2d 104 (1997).

III

Finally, plaintiff argues that, if in fact he waived his right to future employment with the Treasury in the settlement agreement, the agreement would not be enforceable for public policy reasons. This is a

question of law that we review de novo. See *Shurlow v Bonthuis*, 456 Mich 730, 734-735; 576 NW2d 159 (1998).

Plaintiff argues that such an agreement would constitute a prospective waiver of his right to be free from unlawful retaliation under the CRA. We disagree. An agreement between two parties settling a civil rights claim, under which one party waived his right to future employment with the other party, is not the equivalent of a prospective authorization of a violation of the CRA. Accordingly, such an agreement would be legally enforceable.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Brian K. Zahra